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HOUSE BILL 338

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Benjamin B. Rios

AN ACT

RELATING TO ANIMALS; INCREASING CRIMINAL PENALTIES FOR CRUELTY TO ANIMALS; PROVIDING FOR SEIZURE OF ANIMALS; PROVIDING CRIMINAL PENALTIES FOR INJURY TO OR HARASSMENT OF A POLICE DOG, POLICE HORSE OR FIRE DOG; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-18-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-1) is repealed and a new Section 30-18-1 NMSA 1978 is enacted to read:

"30-18-1. [NEW MATERIAL] EXTREME CRUELTY TO ANIMALS-- CRUELTY TO ANIMALS-- PENALTIES-- EXCEPTIONS. --

A. Extreme cruelty to animals consists of a person:

- (1) willfully or maliciously torturing,

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1 mutilating, injuring or poisoning an animal; or

2 (2) cruelly killing an animal.

3 B. Whoever commits extreme cruelty to animals is
4 guilty of a fourth degree felony and shall be sentenced
5 pursuant to the provisions of Section 31-18-15 NMSA 1978.

6 C. Cruelty to animals consists of a person:

7 (1) knowingly or recklessly mistreating,
8 injuring, killing without lawful justification, torturing or
9 tormenting an animal; or

10 (2) overdriving, overworking, neglecting,
11 abandoning or failing to provide necessary sustenance to an
12 animal under that person's custody or control.

13 D. As used in Subsection C of this section,
14 "lawful justification" means:

15 (1) humanely destroying a sick or injured
16 animal; or

17 (2) protecting a person or animal from death
18 or injury due to an attack by another animal.

19 E. Whoever commits cruelty to animals is guilty of
20 a misdemeanor and shall be sentenced pursuant to the
21 provisions of Section 31-19-1 NMSA 1978. Upon a second or
22 subsequent conviction for committing cruelty to animals, the
23 offender is guilty of a fourth degree felony and shall be
24 sentenced pursuant to the provisions of Section 31-18-15 NMSA
25 1978.

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F. The court may order a person convicted for committing extreme cruelty to animals or cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order the offender to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

G. The court may order that a person convicted for committing extreme cruelty to animals or cruelty to animals be prohibited from owning or possessing an animal for a period of time determined by the court.

H. The provisions of this section do not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in

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1 accordance with commonly accepted agricultural animal
2 husbandry practices;

3 (5) the use of commonly accepted rodeo
4 practices; or

5 (6) research facilities, intermediate
6 handlers, carriers and exhibitors licensed pursuant to the
7 provisions of 7 U. S. C. Section 2136. "

8 Section 2. A new section of Chapter 30, Article 18 is
9 enacted to read:

10 "[NEW MATERIAL] SEIZURE OF ANIMALS. --

11 A. A peace officer, animal control officer or
12 livestock inspector who reasonably believes that the life or
13 health of an animal is endangered due to cruel treatment by
14 the animal's owner may apply to the magistrate court or the
15 metropolitan court, in the county where the animal is located,
16 for a warrant to seize the animal.

17 B. If the magistrate court or metropolitan court
18 finds probable cause that the animal is being cruelly treated,
19 the court shall issue a warrant for the seizure of the animal.
20 The court shall also schedule a hearing on the matter for no
21 later than ten days following seizure of the animal. Written
22 notice regarding the time and location of the hearing shall be
23 provided to the owner of the seized animal. If the animal is
24 a type of livestock, written notice shall also be provided to
25 the New Mexico livestock board. If the owner of the animal

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1 cannot be determined, a written notice regarding the time and
2 location of the hearing shall be posted where the animal is
3 seized at the time of the seizure.

4 C. If the magistrate court or the metropolitan
5 court finds that the seized animal is not being cruelly
6 treated and that the animal's owner is able to adequately
7 provide for the animal, the court shall return the animal to
8 its owner.

9 D. If the magistrate court or metropolitan court
10 finds that the seized animal is being cruelly treated or that
11 the animal's owner is unable to adequately provide for the
12 animal, the court shall not return the animal to its owner and
13 the court shall determine the proper care for the animal. The
14 court may place the animal for adoption, place the animal in
15 an animal shelter, provide for the sale of the animal at
16 public auction or provide for the humane destruction of the
17 animal. Upon a finding that the animal's owner treated the
18 animal cruelly or that the owner is unable to adequately
19 provide for the animal, the owner shall be liable for the cost
20 of boarding the animal and all veterinary care provided to the
21 animal. "

22 Section 3. A new section of Chapter 30, Article 18 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] INJURY TO A POLICE DOG, POLICE HORSE OR
25 FIRE DOG--HARASSMENT OF A POLICE DOG, POLICE HORSE OR FIRE

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1 DOG. --

2 A. As used in this section:

3 (1) "fire dog" means a dog used by a fire
4 department, special fire district or the state fire marshal
5 for the primary purpose of aiding in the detection of
6 flammable materials or the investigation of fires;

7 (2) "police dog" means a dog used by a law
8 enforcement or corrections agency that is specially trained
9 for law enforcement or corrections work in the areas of
10 tracking, suspect apprehension, crowd control or drug or
11 explosives detection; and

12 (3) "police horse" means a horse that is used
13 by a law enforcement or corrections agency for law enforcement
14 or corrections work.

15 B. Injury to a police dog, police horse or fire
16 dog consists of willfully and maliciously:

17 (1) striking, beating, kicking, cutting,
18 stabbing, shooting or administering poison or other harmful
19 substance to a police dog, police horse or fire dog; or

20 (2) throwing or placing an object or substance
21 in a manner that is likely to produce injury to a police dog,
22 police horse or fire dog.

23 C. Whoever commits injury to a police dog, police
24 horse or fire dog when the injury causes the animal minor
25 physical injury or pain is guilty of a fourth degree felony

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1 and shall be sentenced pursuant to the provisions of Section
2 31-18-15 NMSA 1978.

3 D. Whoever commits injury to a police dog, police
4 horse or fire dog when the injury causes the animal serious
5 physical injury or death or directly causes the destruction of
6 the animal is guilty of a third degree felony and shall be
7 sentenced pursuant to the provisions of Section 31-18-15 NMSA
8 1978.

9 E. A person convicted of injury to a police dog,
10 police horse or fire dog shall be ordered to make restitution
11 for the animal's veterinary bills or replacement costs of the
12 animal if it is permanently disabled, killed or destroyed.

13 F. Harassment of a police dog, police horse or
14 fire dog consists of a person willfully and maliciously
15 interfering with or obstructing a police dog, police horse or
16 fire dog by frightening, teasing, agitating, harassing or
17 hindering the animal.

18 G. Whoever commits harassment of a police dog,
19 police horse or fire dog is guilty of a misdemeanor and shall
20 be sentenced pursuant to the provisions of Section 31-19-1
21 NMSA 1978.

22 H. Whoever commits harassment of a police dog,
23 police horse or fire dog that results in bodily injury to a
24 person not an accomplice to the criminal offense is guilty of
25 a fourth degree felony and shall be sentenced pursuant to the

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provisions of Section 31-18-15 NMSA 1978. "

Section 4. REPEAL. -- Sections 30-18-2 and 30-18-2.1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-2 and Laws 1981, Chapter 226, Section 1) are repealed.

Section 5. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1999.